SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MIDDLESEX COUNTY
DOCKET NO. L-1141-99(MT)

MYRON A. MEHLMAN, As Administrator Ad Prosequendum and Administrator of the Estate of Constance L. Mehlman, Deceased,

Plaintiff,

vs.

PHILIP MORRIS INC., (PHILIP MORRIS U.S.A.) and R.J. REYNOLDS TOBACCO CO.,

Defendants.

VIDEOTAPED DEPOSITION OF: BENJAMIN H. SAFIRSTEIN, M.D.
DATE: Wednesday, November 29, 2000
TIME: 9:25 a.m.
LOCATION: JONES, DAY, REAVIS & POGUE
999 Lexington Avenue
New York, New York
TAKEN BY: Counsel for the Plaintiff
REPORTED BY: PATRICIA M. MULLIGAN
Certified Shorthand Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Charleston, SC (843) 722-8414
Columbia, SC (803) 731-5224
Greenville, SC
Charlotte, NC

APPEARANCES OF COUNSEL:

ATTORNEYS FOR THE PLAINTIFF

NESS, MOTLEY, LOADHOLT,
RICHARDSON & POOLE
BY: RHETT D. KLOK, ESQ.
28 Bridgeside Boulevard
P.O. Box 1792
Mount Pleasant, SC 29465
(843) 216-9000

ATTORNEYS FOR THE DEFENDANT
PHILIP MORRIS

DECHERT, PRICE & RHOADS
BY: BRUCE W. CLARK, ESQ.
Princeton Pike Corporate Center
P.O. Box 5218
Princeton, New Jersey 08543-5218
(609) 620-3212

ATTORNEYS FOR THE DEFENDANT

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R.J. REYNOLDS
RIKER, DANZIG, SCHERER,
HYLAND & PERRETTI LLP
BY: ANNE M. PATTERSON, ESQ.
Headquarters Plaza
One Speedwell Avenue
Morristown, New Jersey 07962
(973) 538-0880

ALSO PRESENT

P. Terrence Gaffney, Esq.
Womble, Carlyle, Sandridge & Rice
Michael Enoches, Videographer
(INDEX AT REAR OF TRANSCRIPT)

STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the Federal Rules of Civil Procedure; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the witness has reserved the right to read and sign the deposition after review by counsel.

* * * * * * * * * * * *

(Whereupon, Exhibits Safirstein-1 and Safirstein-2 are marked for identification by the reporter.)

THE VIDEOGRAPHER: This is the videotaped deposition of Dr. Benjamin Safirstein taken this date in New York, New York, at the time indicated on the video screen, in the matter of Mehlman versus Philip Morris, et al.

Will the attorneys now introduce themselves and the parties they represent.

MR. KLOK: My name is Rhett Klok. I'm representing Ness, Motley. I work for the firm of Ness, Motley, Loadholt, Richardson & Poole, representing the Mehlman family.

MS. PATTERSON: Anne Patterson at Riker, Danzig, Scherer, Hyland & Perretti on behalf of defendant R.J. Reynolds Tobacco Company.

MR. CLARK: Bruce Clark; Dechert, Price & Rhoads, for Philip Morris Incorporated.

MR. GAFFNEY: My name is Patrick Terrence Gaffney. I'm here in attendance.

MR. KLOK: What firm do you represent?

MR. GAFFNEY: Womble, Carlyle.

BENJAMIN H. SAFIRSTEIN, M.D.
[DELETED]

being first duly sworn, testified as follows:

MS. PATTERSON: Before we begin, Mr. Klok, I want to note for the record the stipulation that an objection by one defendant is considered to be an objection by both.

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MR. KLOK: Very good. Thank you.

EXAMINATION

BY MR. KLOK:

Q. Good morning, Dr. Safirstein. How are you doing?

A. Good morning.

5

Q. During the proceeding, this deposition, I'm going to be asking several questions. Unless you ask me for clarification I'm going to assume you understood the questions. Is that okay with you?

A. Fine.

Q. Also, if you ever feel the need to take a break just let me know. This isn't a torture chamber. I'll be happy to grant any break you need for whatever reason. Is that okay?

A. Thank you.

Q. The only thing I do ask is if there's a question pending that you answer that question before taking that break. Is that understood?

A. Yes.

Q. Dr. Safirstein, have you ever been deposed before?

A. I have.

Q. And under what circumstances or -- How many times?

A. I'd say about ten to 15 times over the last 30 years.

Q. Have you ever offered testimony for a tobacco company in litigation?

6

A. No.

Q. Have you ever offered deposition testimony for a tobacco company in litigation?

A. No.

Q. Or have you ever been -- Prior to this Mehlman case have you ever been retained or hired as an expert consultant for any tobacco case?

A. No.

Q. I'm going to hand to you what's marked as Safirstein Exhibit 1 and see if you can identify that document for me.

A. Yes.

Q. What is this document, Dr. Safirstein?

A. It's a summary of an oral report regarding my background, my opinion, and a brief review since 1996 of memories of my testifying history.

Q. Do you remember when you worked on -- when you saw this document for the first time?

A. A few weeks ago.

Q. As you sit here today is there anything in this document that doesn't reflect the opinion you intend to give in testimony in the Mehlman matter?

7

A. Yes.

Q. What is that?

A. There's some comments regarding lung cancer here related to fat and diet. "Mr. Safirstein is

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expected to testify to additional risk factors of asthma, high-fat diet, stress." That's not quite true. Other risk factors that I had mentioned -- I don't know why I should have corrected this. -- is asthma, preexisting lung disease. I am not going to comment on high-fat diet, and stress was actually mistaken. Depression.

MS. PATTERSON: That's, for the record, on Page 3 of Exhibit 1.

Q. Are there any other changes? I note towards the back of the document there's a curriculum vitae. It's marked as Exhibit A in this document. Are there any changes or updates to this CV since the date that this was presented?

MS. PATTERSON: Take your time and look through it.

A. I think -- I have in the last year become chief medical officer of an organization called Breath Net. That's the only addition.

Q. What does Breath Net do?

A. Breath Net is a disease management

organization for specialists in pulmonary medicine in the metropolitan area focusing on asthma, emphysema, and lung cancer -- treatment of asthma, emphysema and lung cancer.

Q. Is there anything else --

A. No.

MS. PATTERSON: Let Mr. Klok complete the question before you respond.

Q. I'm going to hand you what's identified as Safirstein-2. The court reporter will hand it to you, and this is a letter I received on November 17th for -- from the lawyers for the tobacco companies, and it was added as a supplement to your disclosure, so as soon as the court reporter is able to give it to you I'll let you identify it.

Is that a letter that you recognize, Dr. Safirstein?

A. Yes. I've seen this letter before.

Q. And what is your involvement with this letter?

MS. PATTERSON: Please take a moment to look through it.

A. This is a list of additional articles that have been reviewed along with a large volume of

articles that I've reviewed in the past.

Q. Are these articles that you, yourself, compiled and are using to supplement your opinion in this case?

MS. PATTERSON: I think that's compound. I object to that. I think break it up if you would.

Q. If you could explain to me how these articles were compiled?

A. I think some were mine. Others were sent to me at my request from bibliographic references. I can identify those that were mine.

Q. Are these articles -- Are you intending to use these articles to supplement your opinion in this case?

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A. Some.
Q. Were any of these articles handpicked by the attorneys for the tobacco companies?
MS. PATTERSON: Objection to the form.
A. I'm not really sure. I think I've -- As I remember, I requested additional references, and I must say that many of them I haven't read personally, but they were sent to me, by the

attorneys, at my request.
Q. Dr. Safirstein, how were you first contacted to offer testimony in this case?
A. Some years ago I met an attorney who I guess is employed at Jones, Day, who attended my daughter's wedding or engagement party, I'm not sure which, and asked if I would be interested in looking at patients with lung cancer. We had had a discussion regarding my interest in lung cancer over the last 30 years, and I said sure.
Q. How many years ago was that, approximately?
A. I think it was in the last two years.
Q. Do you remember the name of the attorney from Jones, Day?
A. I think it's Byron. He's a very close friend of my son-in-law.
Q. What's his last name?
A. Byron Stier, or Stier. And my son-in-law's name is Adam. They were classmates together.
Q. And prior to Mehlman, had you reviewed any other cases dealing with lung cancer or smoking-related disease for Mr. Byron (sic)?
A. No.
Q. Subsequent to that initial meeting

at your daughter's wedding, when was the next time you had contact with lawyers from Jones, Day?
A. It was not at the wedding. I think it was well before that. I think it was the year before that at the engagement party, because I don't think we talked business at her wedding, in respect to her.
I think I hadn't heard for months, six months or seven months, quite awhile and, actually, it was a very casual conversation. It wasn't anything --
Q. I'll try to not to interrupt you.
When was -- Was the Mehlman case the first case that you've worked on as a result of that conversation?
A. Yes. I believe so.
Q. How were you contacted first to work on the Mehlman case other than what you've already mentioned?
A. Some months after my conversation with Byron, I'm not sure, three or six months later, I was contacted by -- I'm not really sure. There's so many attorneys, but perhaps Terry Gaffney. Perhaps someone in New Jersey. Is Dughi & Hewit somewhere involved in here?

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Q. I don't think they can answer your questions right now, but to the best of your recollection?
A. In any event, I was contacted, and we met -- We discussed some issues that I felt important in lung cancer, and they said, We would like for you to review a case for us, and I think that's the way it evolved over the period of the last year or so.
Q. When did you actually first review materials dealing with the Mehlman matter?
A. About four or five -- four months ago.
Q. Did you have any meetings with the attorneys about the Mehlman case before this deposition?
A. Yes.
Q. How many?
A. I would say two, to my recollection.
Q. For how long?
A. I think the first meeting was about two or three hours, and the second meeting was about three or four hours.
Q. Did you have any reservations about testifying in the case for a tobacco company?
A. Yes.

Q. What were your reservations?
A. I had clearly stated that over the last 25 years I've been a very strong advocate against the tobacco industry regarding smoking as a major cause and risk factor for lung cancer, and it seemed odd that I would defend the tobacco industry. Those were my reservations.
Q. What kind of work did you do for 25 years against the tobacco company -- or "tobacco industry," as you described it?
A. Well, I published my thoughts on lung cancer as chief of the pulmonary division in Newark. I taught every day about lung cancer. I was part of a program in the midseventies sponsored by the National Institute of Health called the Mr. Fit program, in which smoking was identified as one of the major risk factors for both cardiovascular disease as well as lung cancer, emphysema, cancer of the larynx; and ran a large antismoking clinic and published data on graded filters.
As a full pulmonologist I have been very much involved in preventive health because basically much of what happens to our lungs can be prevented, and smoking has done some bad

things to people's lungs. As a director of Oxford Health Plan I purchased the company called Smoke Enders. We included that in our preventive medicine program. I developed the antismoking program for a major HMO, Oxford, in the metropolitan area, and I still believe that smoking is a major risk to the development of lung cancer and a whole host of other illnesses.
Q. What materials have you reviewed so far prior to this deposition and in preparation for your testimony in this case?

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A. It's very difficult to talk about 25 years of literature, but as a teacher and professor and someone who's published on lung cancer I have a file that we could probably get a hernia lifting.
Q. Let me try to narrow that down.
MS. PATTERSON: Can you review --
Q. Why don't we review your opinion, because I understand that you bring your body of knowledge that you're walking into the room with as a result of your education and practice. Why don't we look at Exhibit 1, and if you could, look at Page 2, Item Number 2, "Basis for Dr. Safirstein's opinion."
Did you review expert witness

disclosures from plaintiff experts in this case?
A. Yes, I did.
Q. And are those reflected here in your disclosure statement on Dr. Allan Feingold? Is that correct?
A. That's correct.
Q. And Dr. Kenneth Goldblatt?
A. Yes.
Q. And Dr. Samuel Hammar?
A. Yes.
Q. And Dr. Victor Roggli?
A. Yes.
Q. Are there any other expert disclosures you reviewed beyond the ones mentioned there? Did you review Dr. David Burns' disclosure?
A. I did not.
Q. Did you review Dr. Benowitz' disclosure?
A. I did not.
Q. Did you review Dr. Cummings' disclosure?
A. I did not.
Q. How did you pick these disclosures by the expert witnesses, or were they provided to you?

MS. PATTERSON: Objection to the form. This is compound again. I think just give him one question at a time, if you would.
Q. Dr. Safirstein, you can answer that question if you understand it.
A. I reviewed those which were provided me.
Q. And so these weren't expert disclosures that you requested. Is that correct?
A. Correct.
Q. These were expert disclosures that the lawyers for the tobacco company provided to you. Is that correct?
A. Correct.
Q. Would you have liked to have reviewed other expert disclosures in this case?
MS. PATTERSON: Objection to the form.
Q. You can answer the question, Doctor.
A. I can't review those that I don't know provided an opinion.
Q. Were you ever provided a list of

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all the experts in this case that the plaintiffs are putting forward?
A. No, I wasn't.

17

Q. And did you ever request such a list?
A. No, I didn't.
Q. If you look at Safirstein Number 2, which is the letter, the attorneys for -- And this is -- Mr. Weingold represented to us that these will be materials, if you just read that first paragraph, that you will be relying upon in providing your testimony.
MS. PATTERSON: That's a misstatement of what the letter says. It says that Dr. Safirstein may also rely on the following materials.
Q. Over and above what you've already provided in the first disclosure, which is Exhibit 1, in Safirstein Number 2 these are additional materials that you'll rely upon?
MS. PATTERSON: Again, same objection. It misstates what the letter says.
Q. Dr. Safirstein, do you intend to use this, these articles in Safirstein Number 2, to rely upon?
A. Some of these articles. Yes.
Q. Dr. Safirstein, I don't know if you want to write on that. It's going to mark up

18

the exhibit.
A. It's an old habit.
Q. Were there any other materials beyond the expert witness disclosures that were provided to you by lawyers for the tobacco companies?
A. Depositions by some of the family members of the Mehlman family.
Q. Which depositions did you review?
A. Mr. Mehlman.
Q. Were there any --
A. His daughters -- Mr. Mehlman, his daughters and I believe a son-in-law, Alper (phon) or something like that.
Q. Did you just review one of the son-in-law's depositions?
A. I think I only saw one son-in-law.
Q. What would you say as you sit here today is the sum total of the time you spent reviewing this case?
A. Twenty hours.
Q. If we could, Dr. Safirstein, let's turn to Exhibit A of Safirstein 1, which is your CV.
A. Right.

19

Q. Where were you born?
A. Brooklyn, New York.
Q. Did you go to high school in Brooklyn?
A. I went to Samuel J. Tilden High School.
Q. And after that I think your CV states you went to Brooklyn College and received a

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BA. Is that correct?
A. That's correct. Actually, it's a BS. That's my fault.
Q. That's okay. What was your major?
A. I had a twin major. I had biology and chemistry.
Q. While you were doing your studies working up towards your BS degree did you complete a thesis -- No. Did you?
A. No. I didn't do a thesis at Brooklyn College. Too busy worrying about getting into medical school.
Q. Did you do any research while you were in -- working towards your BS?
A. No, I didn't.
Q. And I suppose you completed your BS degree in four years straight?
A. Correct.

Q. And then you went and were accepted at the Chicago Medical School. Is that correct?
A. I was, but I took a year off and worked as a research fellow in the department of physiology at Chicago from '60 to '61, and I did research that year.
Q. What kind of research were you doing that year?
A. My research was basically on leydic cell tumors in male rats and the incidence of dysplasia in rats. Totally unrelated to anything I had ever done.
Q. And after that you began at medical school. Is that correct?
A. I did.
Q. And then I noticed that you became a fellow in 1971 -- Let me see if I got that right. Strike that. I know you did, but let me try to take this in order.
It states in your CV that you received the National Tuberculosis and Respiratory Disease Fellowship. Is that correct?
A. That's correct.
Q. How did you apply for that?

A. After completing my medical residency at Mount Sinai in 1969 I entered the United States military service. I volunteered during Vietnam and served as a captain in the United States Air Force. At the end of the first year I had concluded that I was interested in pulmonary medicine and wanted to study at what I thought was arguably the best pulmonary center in the world, and that was Brompton Hospital and the Institute for Diseases of the Chest, and I wrote back to my professors at Mount Sinai, Dr. Irving Selikoff and Lou Silcbach, and asked if they would help me find fellowship money. I didn't have really any financial resources to live abroad for a year or however long it would take, and I applied to the National TB and Respiratory Disease Fellowship, which is now the American College -- the American Thoracic Society. It was merged. And I applied in the early Spring

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of 1971 and received notification a month later that they would support my research efforts in the Department of Phys -- in the department at Brompton under the aegis of Dr. Turner Warwick and Jack Pepys for up to three years.

Q. And was that application for a fellowship -- I imagine it was a competitive

application. Is that correct?

A. I don't know. It was a letter, and I guess to this day I suspect I received it because of the strong support I got from Dr. Selikoff and Dr. Silcbach. I don't know if it was real competitive. It wasn't a real contest.

Q. Do you know Dr. Mehlman? Have you ever met him?

A. No.

Q. It states in your resume that you taught as an associate clinical professor of medicine at the New Jersey College of Medicine. Is that correct?

A. That's correct.

Q. And that was from the Years 1973 to 1996?

A. That's correct.

Q. Did you -- During that period did you ever teach your students about the negative health effects of smoking?

A. Yes.

Q. What would you teach your students about that?

MS. PATTERSON: Obviously, generally? You're not asking for everything, I

assume.

A. From 1973 to 1996 I published a protocol, a teaching brochure for my students. I was responsible for the second largest fellowship as well as a residency training program in New Jersey, and it was associated with New Jersey College of Medicine, and the course curriculum was something I developed for that program at Saint Michael's, and in there is clearly evident my belief that smoking was a major risk factor in health in the development of chronic bronchitis, emphysema, lung cancer, as well as a host of other cardiovascular disorders.

Q. Did the way you taught about the negative health effects of smoking change over time?

A. No. I still believe that.

Q. Maybe my question wasn't clear. What I meant is did you adjust what you instructed your students based on what the state of the art, given smoking and health, was during that period of time 1973 through 1996?

MS. PATTERSON: Could you read that question back.

(Whereupon, the last question is

read back by the reporter.)

MS. PATTERSON: Object to the form.

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Q. Do you understand the question?
A. I'm not quite sure.
Q. During that period of time, 1973 to 1996, would you agree that the knowledge about smoking and health issues changed?
MS. PATTERSON: In what way?
A. In what way?
Q. Did it evolve?
A. To my knowledge, in 1973 I taught the same thing, that smoking was bad, and I believed it was bad in 1973, and I believed it was bad in 1996. In 1976 or '77 we started the antismoking clinic and a whole clinic of trying to get people to stop smoking and then was supported by the Mr. Fit program. I don't think my feelings have ever changed.
Now, what I have -- Later in the nineties it was pretty clear that smoking cessation had clearly produced major effects in reducing the incidence of lung cancer in men as the rate of rise in new cases had begun to fall, and I believe we're now -- We're beginning to experience an actual -- a

reduction in lung cancer in men and a relative increase continued in women, but my belief that smoking is a major hazard to health has not changed in 30 years.
Q. But using that example you mentioned which in the nineties smoking cessation reduced the incidence of lung cancer in men --
MS. PATTERSON: I don't think that's what he said, Mr. Klok.
MR. KLOK: I think that summarizes it.
Q. You correct me if I'm wrong, Dr. Safirstein, if I'm misstating what you said.
A. The effects of smoking cessation clearly had reduced the incidence and -- in lung cancer and also decreased the rise that we were seeing in the seventies and eighties.
Q. And did that understanding constitute an evolution in the scientific community's understanding of smoking and health and the incidence of lung cancer in men?
MS. PATTERSON: Object to the form.
A. Yes.
Q. And did that in any way adjust the

way you taught the issues on smoking and health to any of your students as a associate clinical professor of medicine at the New Jersey College of Medicine?
MS. PATTERSON: Object to the form.
A. The most important -- The answer is yes. And the most important thing was that all of us had to spend more time in preventive medicine and getting people to stop smoking and that the effects of smoking cessation were clearly evident by a reduction in mortality and morbidity in America, as it had been seen in the decade earlier in Scandinavia, and it did alter my teaching approach

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because I felt very strongly as a pulmonologist taking care of lung cancer was no great shakes, because most people die, but spending the time to get people to stop smoking and teaching doctors to make sure their patients stopped smoking and finding ways of having them stop smoking was a very important change from the way I taught in the seventies and eighties. And now that you ask that question, I think it really reflects what sort of emphasis lung physicians should really be placing on patients, and I guess it's summed up in an ounce

of prevention is pound of cure.

Q. And, Dr. Safirstein, were there other examples of the medical community and the scientific community having a clearer understanding of an epidemiology of smoking and health issues --

MS. PATTERSON: Object to the form.

MR. KLOK: I'm not finished.

Q. -- that affected the way you taught or presented smoking and health issues to your students as a professor?

MS. PATTERSON: Object to the form. It does not clearly reflect the doctor's previous statement.

You can respond.

A. I'm not sure I understand. Were there other things like what?

MR. KLOK: Counsel, I'm going to start to have a problem with you if you keep on making long speaking objections. You're entitled to make your objections, but I think your speaking objections are out of order.

MS. PATTERSON: That was not a speaking objection. I objected to the form, and I stated it misstated --

MR. KLOK: I think your objection is taken, but I don't think you should go into explanations. I think that's coaching the witness.

MS. PATTERSON: I did not do so, Mr. Klok. You can proceed.

Q. Go ahead, Dr. Safirstein.

A. I'm not sure I quite understand your question. If you could restate it?

Q. Sure. As the scientific community had an evolution of knowledge occur on its understanding of smoking and health -- And using the example of the nineties which we just discussed which was about --

A. Cessation.

MR. KLOK: Let me strike that.

Q. Did you incorporate the evolution of smoking and health understanding of the medical community in the way you instructed your medical students?

MS. PATTERSON: Objection to form.

A. What information? I mean --

Q. The understanding of, for example, the one we just talked about.

A. Cessation?

Q. Correct.

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A. All the time.
Q. Were there any other incorporations of the evolution of understanding of smoking and health issues that were incorporated -- which affected the way you taught your students?
A. Yeah. One particular area that we noted, and that was because of the change in the nature and histology of lung cancer, and that was the rise of adenocarcinoma.
In the sixties and seventies the predominant tissue type that I saw was squamous carcinoma, and in the eighties and nineties we started -- Well, certainly the eighties, early nineties, we started seeing an increase in adenocarcinoma. I think that might have been part of my curriculum change.
Q. Currently in your CV I think it states you are an associate clinical professor of medicine at Mount Sinai School of Medicine. Is that correct?
A. That's correct.
Q. And do you still teach to your students about the negative health effects of smoking?
A. Yes.

Q. Doctor, how many -- What percentage of your time -- And again I know this is probably an approximate or an estimate. -- do you spend teaching?
A. Probably 15 to 20 percent now. I teach two months of the year, seven days a week, at Mount Sinai, usually one month in the summer and one month in the winter.
Q. And what percentage of your time do you spend in clinical practice with patients?
A. Probably 30 percent. Actually, it's 24 hours a week.
Q. Are you actively engaged in research currently?
A. Yes. I'm involved in a large multicentered trial on influenza prevention in elderly patients that was started in 1998 and will be the subject of a major paper on the health effects of preventing pneumonia and mortality in seniors who received influenza injection. I'm also part -- I think the study has now completed in the National Center for Disease Control. It's not in here, but on the comparison of prophylactic therapy for tuberculosis in AIDS patients who are positive. Those are the two subjects. One is supported by the NIH. The

other was supported by the Center for Disease Control.
Q. What percentage of your time would you say you devote towards research currently?
A. About ten.
Q. I also note that you --
A. I'm sorry. Just to be fair, I'm involved in two clinical drug trials as well. One with Genentech Novartis on anti-IgE in the treatment of asthma, and the other is with Schering Corporation,

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the treatment in children with asthma with inhaled steroids called mometasone.
Q. Is there anything else --
A. No.
Q. -- that you remember?
MS. PATTERSON: Did you respond, Doctor?
A. We're in a very preliminary planning session now. We're doing the research trials with Genomics and Millennium Partners on genotypic changes in patients with asthma.
Q. Is there anything else?
A. No, there is nothing else. I hope not.
Q. If you remember you can always mention it later, Doctor.

What -- I notice that you're the director or the medical director at Oxford Health Plans. What is Oxford Health Plans?
A. I'm a director now. I was a medical director for 12 years. Oxford -- And I was the founder. Oxford Health Plans is a health insurance company. Managed care.
Q. What are your areas of responsibility now as director for Oxford Health Plans?
A. Primarily I'm the major consultant to the current CEO, Dr. Norm Payson, and oversee as director the quality assurance program and the quality standards regarding the delivery of care.
Q. What percentage of your time do you think you spend on your -- on some of the business pursuits as being the director, et cetera?
A. Five percent.
Q. Would being an expert in litigation constitute any significant percentage of your time?
A. I don't go to court very often. I do review cases for asbestos and for medical malpractice for the Medical Interchange of New Jersey, and I would say I spend about ten percent

of my time reviewing cases. I don't remember the last time I was in court.
Q. When you've testified in the past have you testified for both the plaintiff and the defendants in the past?
A. My last court appearance was actually for plaintiff.
Q. And what was that matter about?
A. It was the misdiagnosis of a massive pulmonary embolus. The -- I believe the attorneys --
Q. If we could, if you turn to Safirstein-3, this might help answer -- or have you answer these questions because I think it's listed under Item -- Page 3, Item 4. I think there's a list of --
MS. PATTERSON: I think he was in the middle of a response.
Q. I'm just trying to maybe help him.
A. I gave deposition in 1997 in the medical malpractice case of a missed diagnosis of a

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pulmonary embolism. The attorneys are Foley, Connell, and Geiser. I actually had a later one for the defense in 1988 or '89. I defended a physician regarding misdiagnosis of lung cancer.

34

That was another case.

Q. I also note, turning back to your disclosure, that you've been the recipient of -- a grant recipient from the Center for Disease Control. What work were you doing for the CDC?

A. It was a seven-year trial on the prevention of tuberculosis in HIV-positive individuals in Newark.

Q. Have there been any other grants that you received from the CDC for which you're doing work or have done work in the past?

A. No. I'm not sure where the grant money is coming for the influenza. I'm not involved in the financial aspects, but other than that I don't know of any.

Q. Let's turn back to your CV and go through the section on Page 2 called Positions Held. I think the first one begins with your being an instructor at Mount Sinai School of Medicine from 1968 to '69. What were your areas of responsibility?

A. Teaching. I was chief resident.

Q. Then in 1970 you were attending physician in Papworth Chest Memorial in Cambridge, England, in 1970. Was that part of your

35

fellowship?

A. No.

Q. Was that just a way of supplementing your income back then?

A. No. It was -- Actually, I was the liaison -- At that time I was in the military. Lakenheath Hospital was a major referral base for the United States Air Force, but we did not have chest surgery or cardiac surgical capabilities, and I was asked to establish a liaison with the Chest Institute at Cambridge, which I did, and along with that came responsibility on my part to teach.

Q. When did you join the military?

A. I volunteered in 1969.

Q. What branch were you in?

A. Air Force.

Q. What was your rank at that time?

A. Captain.

MS. PATTERSON: When he volunteered?

MR. KLOK: Yes.

Q. How long --

A. I went in as a captain. I left as a captain.

Q. How long were you in the U.S. Air

36

Force?

A. Two years.

Q. And were you in the U.S. Air Force during the same period you were completing your fellowship at Papworth?

A. No. I didn't do my fellowship at Papworth.

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Q. Excuse me?
A. I did my fellowship after I left the Air Force. My fellowship was done in London. Papworth was in Cambridge.
Q. I stand corrected.
During -- I think your next position held was as clinical assistant, department of immunology, issues of disease of chest, in London, England. Is that correct?
A. That's correct.
Q. Was there any main focus in your fellowship?
A. Yes.
Q. What was it?
A. The reason I was sent there was really to work with Dr. Jack Pepys and Margaret Turner Warwick on the development of the effects of organic and inorganic dust in the development and causation of interstitial lung disease, and my

thesis was really on the development of hypersensitivity, lung disease, and asthma on inhaled mold called allergic bronchopulmonary aspergillosis. I also published and focused on the concept of bronchial challenge in the diagnosis of asthma.
Q. And who were you studying under during that time?
A. Jack Pepys. The British system is Jack Pepys was my immediate supervisor, but the department head was Margaret Turner Warwick and J.G. Scadding.
Q. In 1972 you were attending physician at Mountainside Hospital in Montclair, New Jersey. Is that correct?
A. That's correct.
Q. What was your area of responsibility during that period of time?
A. I was just a doc.
Q. Were you offering pulmonology expertise, or were you offering -- Was it a general practice?
A. Oh, no. I was a pulmonologist, and I practiced pure pulmonology there. Chest physician.
Q. And then subsequent -- After that,

in 1973 you became assistant clinical professor of medicine in the department of environment and medicine at Mount Sinai, and that lasted from 1973 to '96. Is that correct?
A. To '78.
Q. '78.
Why was it under the department of environment and medicine?
A. My relationship with the new chief of the pulmonary division in medicine was never very positive, but my relationship with Dr. Irving Selikoff was kind of father/son. He was really the one who helped me obtain the fellowship to study in London. I was very much enamored with Irv Selikoff. I believed very much in preventive medicine, and I thought that what -- his work was very important, and he was a great man.

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Q. What were you working on while in that position from '73 to '78? What were your main areas of responsibility?
A. I was an extra pair of hands to go out on field studies looking at environmental exposure to asbestos. Because my practice was right around the corner from where he used to be -- As a matter of fact, it was he who helped set up my practice in

Montclair. He had previously been in Paterson. It was easy for me to go with him on field studies in and around the Paterson area. It was consistent.
Q. Were you focusing on occupational diseases?
A. Entirely.
Q. Did you do any work upon radon during that period of time?
A. No. I lived next-door to it where they removed all the houses in Montclair. No. I didn't do any work on radon.
Q. You mentioned asbestos. Were there any other occupational exposures you were working on or any other environmental risk factors?
MS. PATTERSON: During that period of time?
Q. During that period of time?
A. Not really. I was part of the discussion teams on PCBs at the time in water, but basically my interest was again interstitial lung disease and inorganic dust.
Q. When discussing this case with the lawyers for tobacco companies, did they ever ask your opinion on radon being a potential risk factor for Connie Mehlman?

A. I don't think the lawyers asked me. I certainly read some of the opinions in the depositions, but I don't think the attorneys asked me about radon.
Q. Do you have any opinion as to whether Connie Mehlman's adenocarcinoma may have been caused by radon exposure?
MS. PATTERSON: Object to the form.
A. I have no opinion.
Q. Is radon and its relationship to lung cancer usually associated with adenocarcinoma?
MS. PATTERSON: You're asking him for an opinion on this?
MR. KLOK: Correct.
MS. PATTERSON: I object.
A. I'm not an expert on radon. I would rather -- I don't know.
Q. Have you ever done any reading in the literature of radon?
A. Very little. I have a personal prejudice that I'm -- I don't think it's a major cause of lung cancer, but I'm not an expert.
Q. Why do you characterize it as a personal prejudice?

A. I just don't seem to believe that some of the concerns on radon exposure merit the kind of

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incidence of lung cancer that we've seen, but, again, I'm not an expert on radon.

Q. Have you ever treated patients who were occupationally exposed to radon in high doses?

A. No.

Q. I noticed your resume -- And you mentioned earlier that you were a co-founder of Oxford Health Plans. Do you have an ownership interest in Oxford Health Plans?

A. Yes.

Q. And to your knowledge are any tobacco companies clients for Oxford Health Plans?

A. Not to my knowledge.

Q. Or to your knowledge are any trade organizations for the tobacco companies clients for Oxford Health Plans?

A. Not to my knowledge.

Q. And to your knowledge are any law firms that represent tobacco companies clients for Oxford Health Plans?

A. Not to my knowledge.

Q. What do you know about Connie Mehlman's smoking history?

A. It is quite muddied, actually, and I spent a lot of time trying to delve into all of the various comments.

To the best of my knowledge, I believe she was a smoker starting at about Age 17 and that she tried to quit during the Surgeon General's report in 1964 or 1965 and that she smoked anywhere between, at least in that time, a half a pack of cigarettes to a pack, and then from 1964 or '5, at least according to her husband or children or the doctors who looked at her, smoked until '74. But during that time she was described as someone who we used to call them mooching, took cigarettes from other people, stopped in '68 or '67 for a period of two years when she went to a group out of Maryland. I think she went to Smoke Enders. She clearly was trying to stop over a period of time and then was successful sometime in either '72 or '74. It's not really clear.

In some of the physicians' reports at Columbia she's alleged to have been a 20-pack-a-year smoker. In others -- It's in Feingold. He -- In his deposition he thought she might be between 15 and 20. Her treating physician at one point had her as 20 pack years. Others it

was 19 -- It was less. The pathologist had, I think Dr. Hammar, he thought she was a half-a-pack-a-day smoker from Age 17 to 31 and then less than that until '74. It's never clear, and when you try to focus on what information you get from the children from their depositions, what you're impressed with is no one ever really saw her smoke or she didn't smoke around the family, which is not uncommon in people who sneak cigarettes behind the barn, so I really can't say for sure whether she was a ten-pack-a-year smoker or a 20-pack-a-year smoker but, clearly, she was a regular smoker from the records from 17 -- from Age

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17 to about 31, and then I don't know what it is.
Q. Did you review the deposition testimony of any of the experts in this case?
A. Which experts?
Q. Well, any experts?
A. Dr. Feingold, Dr. Hammar, Dr. Roggli.
Q. Did you review Dr. Goldblatt's deposition?
A. Yes. Dr. Goldblatt.
Q. What's your practice, Doctor, when you first take in a patient who has a history of pulmonary disease? What's the usual practice or

your usual practice?
A. Time-tested, getting a history and physical. I ask them what their chief complaints are, and then we go from there.
Q. Is smoking history an important question for you when interviewing a first -- an initial patient?
A. Yes.
Q. And do you usually personally ask those questions when you meet the patient?
A. Yes.
Q. What do you usually look for when you're asking those questions?
A. When they started smoking, age of onset, how much. I used to ask, Filters or nonfilters, but I don't anymore. When did they quit, and because of the change that we've seen in the -- in the sixties it was very easy, the seventies. They started, they quit, or they didn't quit. But many people now go through periods of time where they try to stop and they reduce, and it's important because we know that the quantity of cigarettes relate to the incidence of disease, at least in some issues. The more you smoke, the greater the effect. So I try to elicit, Did you try to quit?

Because that's important information because if people want to try I try to get them into antismoking programs.
As I mentioned to you, in the last ten years probably one of my biggest goals or my main responsibility is to get people to stop smoking. It's probably the most important thing I can do for them. All the other stuff I think pales, and the fact is, as I tried to elicit a history of how many cigarettes they smoked, how many times they tried, how successful, how long of a period they were successful for, trying to formulate which antismoking program I would like to try to get them into, and then I believe in -- We have a computerized program that I just wrote. We try to quantitate did they inhale or did they not inhale. I don't ask that any more, either, but there's a program that does.
Q. Do you remember -- In your review of Dr. Goldblatt's deposition testimony do you remember when Dr. Goldblatt started seeing Connie Mehlman, what year?
A. I think it was '84.
Q. That was about ten years after

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Connie Mehlman quit smoking. Is that correct?

A. That's correct.
MS. PATTERSON: He's not being given any records. He's doing this based on recollection.
MR. KLOK: Correct.
MS. PATTERSON: And I would suggest if you have specific questions on those records that you provide them to him.
MR. KLOK: I'm just going through what Mr. Safirstein remembers.
Q. Do you remember in the deposition any discussion about his intake notes and Connie Mehlman's smoking history?
A. Somehow or other I do think that there was something that said DC'd in '74 or either 20 pack years. I don't know where I saw it, in what expert, but there was something in that.
(Whereupon, Exhibit Safirstein-3 is marked for identification by the reporter.)
Q. I'm going to hand to you Safirstein Number 3, which I'll represent to you are the intake notes that were discussed in that deposition of Dr. Goldblatt on his first consult with Connie Mehlman.
MS. PATTERSON: Please take a

moment to review it.
A. This is the consult note? In '84. Right. Okay.
Q. And I also understand that doctors' handwriting can be sometimes difficult to read.
A. I can read it all.
Q. Okay. Let me know when you're finished reviewing it and I can ask you some questions about it.
A. Yes.
Q. If I could turn your attention to Page 2, is this kind of the standard page that's used when you go visit a doctor for the first time, your previous history of disease and you kind of fill out the check boxes, et cetera?
A. I don't use this form.
Q. Do you see on Item Number 5 where it says "smoking"?
A. Yes.
Q. Can you read that?
A. Stopped ten years ago.
Q. And then under that?
A. About 20 pack years.
Q. And this was as a result of

Dr. Goldblatt speaking to Connie Mehlman ten years after her quitting. Is that correct?
MS. PATTERSON: I would object to you asking Dr. Safirstein how this form came about because we've established it's not his form and he wasn't there.
Q. Dr. Safirstein, do you recollect, in reviewing Dr. Goldblatt's deposition, discussion on the record about this item?

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MS. PATTERSON: I think in fairness to the witness, Mr. Klok, if you have the deposition you would like him to comment on you ought to show it to him. I don't think asking him general questions about one of many depositions he read is helpful, and it could potentially be misleading, and I would object.

Q. Doctor, you can answer the question. Do you remember reviewing discussion in the Goldblatt deposition about this?

A. I remember in Dr. Goldblatt's deposition he said that he thought she had a 20-pack-year history of smoking. I think I said that before, too.

Q. In all the evidence that you've reviewed thus far in this case have you seen any indication that's closer to 1974 than this record

about Connie Mehlman's smoking history?

MS. PATTERSON: Object to the form. I don't understand the question.

Q. You can answer the question, Doctor, if you understand it.

A. Perhaps you can clarify it. Do you mean did I see records from 1983 or '78?

Q. Any time prior to 1983 did you see any records that indicated Connie Mehlman's smoking history?

MR. CLARK: You mean '84.

Q. To be precise, 3-22 --

MS. PATTERSON: Why don't you rephrase, because I think we have a messy record at this point.

A. I did not see records prior to 1984.

Q. Would it be fair to say that patients by and large have a better recollection of their smoking history ten years after they smoke than subsequent to that?

MS. PATTERSON: Is this in relationship to Miss Mehlman or in general?

Q. Doctor, the question you can answer if you understand it.

MS. PATTERSON: Object to the

form.

A. Say it again.

Q. Would it be fair to say that patients generally have a better recollection of their smoking history the closer they are from the quitting period than subsequent to that?

MS. PATTERSON: Same objection.

A. The closer they are to the quitting period than after that. Yes.

Q. Let's go back to talking about Connie's medical history.

What other significant evidence did you review on Connie Mehlman's smoking history that would be important to you as a pulmonologist?

MS. PATTERSON: Object to asking him that without materials he reviewed in front of him, but he can respond.

A. I reviewed the intake history in 1997 at Columbia Presbyterian in which she was diagnosed with lung cancer. I reviewed information, medical

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records, I guess, by Dr. Goldblatt subsequent to the original one. I believe there was a psychiatrist review that alluded to her smoking history.

Q. Do you have an opinion --

51

MS. PATTERSON: Did you have something else to say?

THE WITNESS: No.

Q. Do you have an opinion as to how many pack years Connie was exposed to?

A. I have an opinion.

Q. What is your opinion?

A. It's considerably less than 20 pack years.

Q. Could you give me -- do you have a specific year beyond considerably less than 20 years?

A. Sometime around 15. Maybe 13 to 15 pack years if you would consider 20 cigarettes a day every day times the number of years.

Q. Do you remember what brands Connie Mehlman smoked, what brands of cigarettes?

MS. PATTERSON: Based, obviously, on the evidence that he doesn't have a personal knowledge of.

A. Marlboro? No. I don't remember what brands.

Q. If I were to tell you her brands were Marlboro and Camel would you have any reason to disagree with that?

A. No.

52

Q. Do you remember whether she smoked filter or filterless cigarettes?

A. No, I don't.

Q. Do you know whether she smoked low-tar, low-nicotine cigarettes?

A. I have no idea.

Q. Would knowing what kind or type of cigarette she smoked be significant in knowing whether or not --

MR. KLOK: Let me strike that.

Q. The type of cancer Connie Mehlman had was adenocarcinoma. Is that correct?

A. Correct.

Q. Is it significant to know what type of cigarette she smoked given that she had adenocarcinoma?

MS. PATTERSON: Object to the form.

A. No.

Q. Do you think there are histologies that manifest in lung cancer which are --

MR. KLOK: Let me strike that.

Q. Do you think there could be a variation of histologies that manifest in patients' lung cancer given the type of cigarettes they

53

smoke?

MS. PATTERSON: Object to the form.

A. I don't have an opinion.

Q. Is there any particular

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information you've viewed on Connie Mehlman's smoking history that led you to believe that there was 13 to 15 pack years of exposure?
A. I think some of the depositions on recollections of when she smoked. Also, my personal experience that people, when they start smoking as teenagers, rarely start smoking a pack a day. They generally graduate from a few cigarettes. They smoke them, they steal them, and then they gradually over a period of a couple years go to kind of a plateau.
I was never really sure whether she was smoking ten cigarettes a day or 20 cigarettes a day. Given the fact that few people saw her, it's pretty tough to smoke 20 cigarettes a day unless you're hiding somewhere.
I also thought there probably were good periods of time when she was able to stop completely when she went to a program at the Seventh-Day Adventist. This is clearly a woman who

was trying to stop, and I think she was successful a number of times. My own experience also is when women deliver babies they tend to reduce their cigarette smoking. And she had three children, and I think bringing all of that in, no one I know smokes a pack a day for 20 years on a flat curve. We know that. We know that there's an acceleration and there's a deceleration. Very few people quit cold turkey. I'm a smoker and I had been a smoker, and that's -- Essentially, I think most people they start in teenage years. They stop, and they stop in a graduated fashion.
Q. Are you currently a smoker?
A. Yes.
Q. When did you start smoking?
A. Seventeen.
Q. And what brand of cigarettes do you smoke?
A. Whatever I can mooch. I smoke one cigarette a day.
Q. Did you ever smoke a pack a day or more?
A. I think in medical school I might have smoked two packs a day.
Q. What, if anything, did they teach

you about smoking while you were at medical school?
A. Remarkably, very little.
Q. Do you remember any discussions?
A. Yes.
Q. What were they?
A. I had one of the great discussions with Professor Russell Von Melizer (phonetic) who was the head of pathology, who would show me lung cancers at autopsy smoking cigarette after cigarette after cigarette, and we would watch this, and the ashes would fall into the wound, and I would walk out and I would say, Dr. Melizer, why are you doing this? Why do you smoke like that? He said, Don't worry about it. You know, my father smoked until 95. He didn't have lung cancer. My grandfather smoked until he was 90. But those are

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the sort of things in medical school. We didn't get very much -- I went to medical school from '61 to '65 and there was the Surgeon General's report in '63, '64, but I think most of us knew smoking wasn't good for you.

Q. Was there any discussions while you were in medical school when the Surgeon General's report came out in 1964 or do you recollect --

56

A. I don't recollect any of that.

Q. And did most of your contemporaries smoke?

A. Yes. I used to sit in a conference room like this and you would see the slides of lung cancer, and all the smoke would be coming out of the air.

Q. Was there any instruction that you remember in a formal sense about smoking and health?

MS. PATTERSON: Medical school?

MR. KLOK: Yes.

A. No.

Let me correct that. Yes. It caused Berger's disease. Peripheral vascular disease.

Q. Berger's disease is an extremely rare disease?

A. Not as rare as people think. Rare meaning one in a million? No. It happens. In an average practice a person will see a few cases.

Q. Do you think most people have an understanding of Berger's disease as an association with smoking?

A. No, but in the sixties it was pretty well

57

understood that smoking was related to peripheral vascular disease of all kinds.

Q. Were there any discussions in medical school that posed smoking and health as a debate in its relationship to lung cancer?

A. Not to my knowledge in medical school.

MR. KLOK: Why don't we take a five-minute break. It's almost eleven o'clock.

THE VIDEOGRAPHER: We're off the record.

(Recess.)

THE VIDEOGRAPHER: We're back.

Q. Dr. Safirstein, I think we briefly touched on it, but I don't think we did it in any detail. How do you help or advise your patients to quit smoking?

A. I follow the National Institute of Health guidelines in which a patient is asked to first say you want to quit. If they want to quit, pick a date, and if they pick a date, let's begin and stop smoking. That's a difficult way. I don't know if it's the best way. I've used various other techniques; gradual reduction, which works, generally, in my experience, better. Let's cut down from a pack to half a pack to a quarter of a

58

pack and then pick a date and let's cut the rest of

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it out. I've used nicotine patches, filters. I've used graded filters that used to give you a hernia to suck it in. I use virtually every technique that I find, and eventually in some I send to behavioral modification specialists, psychologists who will help people stop smoking. I used to send to Smoke Enders, and there's a certain percentage of people who used to do very well with Smoke Enders.

Q. Do you believe, in your medical opinion within a reasonable degree of medical certainty, that cigarettes are physiologically addictive?

MS. PATTERSON: Objection to your asking him that question. He has not been offered as an expert on that. He has not offered an opinion on that, and I think it's inappropriate to ask him for an opinion.

Q. Dr. Safirstein, you can answer the question.

A. I have no opinion on that.

Q. Do you think that nicotine in cigarettes is physiologically addictive?

MS. PATTERSON: Same objections.

He has not been offered as an expert on any of these topics, and I think you have a clear disclosure statement as to what the parameters of his expertise are.

Q. Again, Doctor, if you can?

A. Restate the question?

Q. Do you think that nicotine in cigarettes is physiologically addictive?

A. I don't know, really.

Q. Do you believe that smoking is hard to quit?

MS. PATTERSON: Same objection.

A. I'm going to answer that question. I think in some people, yes. On the other hand, I would qualify that and tell you that most of my colleagues have quit and many of my friends have quit, and I don't remember going to a cocktail party in years where I've seen a cigarette smoked, so that as common sense I think a lot of people have stopped smoking and have been able to do it. That's just common sense. That's not as a physician.

Now, as a physician I have been very successful in getting people to stop smoking. Not through one technique, but through multiple

techniques which I believe most of the time is because people know that cigarette smoking can be harmful.

Q. Have you noticed a change in your patients' attitude about smoking, through the years of your practice?

A. Unequivocally.

Q. What has that change been?

A. They believe that cigarette smoking is harmful. They believe it's not in their best interest, and they have stopped smoking.

Q. So have you, at least in your

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personal practice, seen a change in attitude of your patients about smoking and health?
MS. PATTERSON: Asked and answered.
A. A change in attitude. I think I just answered that. I think the answer is yes.
Q. Let's go back to Safirstein-1, and if we could turn to Page 2 under Item 3, subheading "Substance of Dr. Safirstein's Opinions," and I think we -- If I could, Doctor, I would ask you to just briefly review that again. I know you gave me some corrections earlier today.
MS. PATTERSON: Just to be clear,

61

you want him to review Section 3 or the whole --
Q. The Section 3, and just make sure that taking into account his corrections that that is an accurate statement of your opinion in this case.
A. In the comment, "Dr. Safirstein is expected to testify in his 30 years of clinical experience he has never seen a patient." It was I've never seen a female patient.
Q. Okay.
A. I have seen a male develop lung cancer after 34 years.
Q. In terms of how it is written, "He will testify that Constance Mehlman's radiographic presentation is not the opposite." It's not "consistent" is a better word.
MS. PATTERSON: Would you just then state it as you would state.
A. He will testify that Constance Mehlman's radiographic presentation is not consistent with what he would expect of an asthmatic who smoked for 22 years.
MS. PATTERSON: For the record, Dr. Safirstein is making that notation on the exhibit.

62

Q. Tell me, Dr. Safirstein, when you finish, and we'll -- I'll ask questions.
A. I think we made the changes on high fat and changed the word "stress" to "depression."
Q. If you would, Doctor, write in your changes on that exhibit so it reflects what you want there.
A. Asthma, previous lung disease -- preexistent lung disease. Eliminate "high-fat diet" and change "stress" to "depression."
Q. It's funny that you changed the radiographic portion, because that's my next question, so let's see if you can explain it to me.
A. Sure.
Q. Let me see if I got that right, because now it's changed. So let me look at that.
A. I read it as "He will testify that Constance Mehlman's radiographic presentation is not consistent with what he would expect of an asthmatic who smoked for approximately 22 years."
Q. I think up above in Paragraph 1 there seems to be a related -- It's the first sentence. I turn your attention to it because we

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haven't changed it. "Dr. Safirstein is expected to testify that Constance Mehlman had no medical or

63

radiographic evidence of restrictive or obstructive pulmonary disease that would be expected in a patient with asthma and a history of cigarette smoking."

Is that still an accurate statement?

A. That is.

Q. In lay terms could you explain that to me as -- since I'm not a doctor, what that means?

A. You would expect in an individual who has smoked, who has a history of childhood asthma, to have had serious impairment in pulmonary testing; specifically FEV 1, forced capacity, forced respiratory volume, total lung capacity and diffusion, and the pulmonary function studies that I read or were given to me were essentially normal. You don't expect to see that in someone especially with asthma and smoking. Indeed, I've published that on numerous occasions, and you would also expect that in someone who smoked with asthma would have evidence on X ray of inflated lungs, the kind of lungs that show air trapping, cyst formation, because asthma is an inflammation and smoking increases inflammation and, therefore, subsequent

64

scarring. As a matter of fact, there are some people who believe that emphysema is nothing more than an asthmatic who smokes. And we see none of that on either her X rays, CAT scans, or pulmonary function testing. Totally discoordinated.

Q. Did you have an opportunity -- I'm sorry. Did you finish?

A. Yes.

Q. I didn't want to cut you off.

Did you have an opportunity to review Dr. Goldblatt's medical records for this case?

A. Yes.

Q. And did you find any evidence of asthma in those records?

A. Only by history.

Q. Do you have any reason to question the diagnosis of asthma in Connie Mehlman's case?

A. No.

Q. Do you think she was asthmatic?

A. Yes.

Q. Then what explains -- I think I'm confused. Maybe I'm not understanding. Why wouldn't there be a radiological evidence of that asthma in Connie Mehlman's case or why does it run

65

afoul of what you would expect of an asthmatic?

MS. PATTERSON: I think that misstates what he testified to. I think he said it was what you would expect of an asthmatic who smoked.

Q. So you did see radiological evidence -- Let me rephrase.

Is it possible to see radiological

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evidence of an asthmatic who -- just being an asthmatic?
A. No. An asthmatic can have a normal X ray who's mild.
Q. Did -- In your review of Dr. Goldblatt's medical records did you see any pulmonary function tests that were conducted?
A. Yes.
Q. And what did they show?
A. They were normal.
Q. Do you have an opinion as to the severity of Connie Mehlman's asthma? Was it severe? Was it a mild case?
A. Using the National Institute of Health clinical guidelines, she would be considered mild to mild persistent.
Q. How did you come to that opinion?

What did you use to --
A. The function studies I saw showed functions that were greater than 80 percent of normal. Her symptoms were intermittent. She did not, at least according to the records, complain of using -- or having symptoms greater than two times a week. It didn't appear to be a lot of nocturnal symptoms. At least from the records.
Q. Was there anything else?
A. No.
Q. Now, turning back to the Paragraph 2 where it says, He will testify that Constance Mehlman's radiographic presentation is not consistent with what he would expect of an asthmatic patient who smoked for approximately 22 years --
MS. PATTERSON: It's a minor point, but there's no word "patient" in there.
Q. Do you see that sentence there, Doctor?
A. Yes. "He will testify that Constance's radiographic presentation is not consistent with what he would expect of an asthmatic who smoked for approximately 22 years."
Q. And the answer you just gave me

previously was -- answers your position on that. Is that correct?
MS. PATTERSON: I'm sorry. I think that's very unclear.
Q. The answer you gave me when responding to the first sentence of the first paragraph was related to this portion here. Isn't it?
MS. PATTERSON: Please be clear about it because there were a series of questions and answers, and it's going to be a very muddy record. Please refer specifically to his testimony.
Q. Dr. Safirstein, you previously talked about -- Let me ask you this question: You talked about why the radiographic presentation was not consistent with what one would expect of an asthmatic who smoked for 22 years already. Is that correct?

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A. Correct.
Q. And you gave me that explanation. Is there anything else about that explanation that would clarify this sentence here?
MS. PATTERSON: Same objection. I think that question is difficult to understand.

68

A. No. I think it's the same.
Q. Okay.
Now, on that first paragraph of Page 2 -- I guess it's the second paragraph under Section 3 -- it states, "Dr. Safirstein is expected to testify that in his 30 years of clinical experience he has never seen a female patient develop lung cancer after 20-plus year history of smoking cessation."
You mentioned that you did have one male patient. Is that correct?
A. Yes. I did.
Q. And did you review your records to see how many patients you actually had that fit the criteria of developing adenocarcinoma after a 20-year cessation period?
A. No.
Q. What did you do -- Is it just using your recollection?
A. My recollection.
MS. PATTERSON: Just to be clear, it was -- The sentence says "lung cancer," not "adenocarcinoma."
Q. When you formulated that opinion was it looking at lung cancer globally or looking

69

specifically at adenocarcinoma?
A. Lung cancer.
Q. Did that male patient have adenocarcinoma, or do you remember?
A. I don't remember. I know who it was because he was a very close friend of mine.
Q. And did he have any occupational exposures to any lung carcinogens or known carcinogens?
A. He was a doctor.
Q. Based on your review of all the evidence in this case thus far is it still your opinion that due to the cessation of Constance Mehlman's -- due to the cessation period of Constance Mehlman that her smoking was not a contributing -- a substantial contributing factor to her lung cancer?
A. Yes.
Q. What do you base your opinion on?
A. Well, my clinical experience, recognizing -- my clinical experience that adenocarcinoma occurs in women who don't smoke. Maybe half of all cases of older women who have lung cancer are nonsmokers with adenocarcinomas, so it's not an uncommon issue. We know that there is

70

somewhere between ten to 15,000 cases each year in the United States of nonsmokers who develop cancer, the majority of which are women, and the majority of those women have adenocarcinoma.

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Number 2, we have a large number -- a number of studies that have shown that cessation reduces the incidence of lung cancer. It's been the hallmark of our teaching program. Even at any age there is a reduction in lung cancer, and the further that -- the longer the period of cessation, the greater the likelihood of ultimately reaching unity where one can say to a patient that if you can stop smoking at this period of time and at -- 20-year period goes on, that your risk -- you got away scot-free.

That's one of the things that we used to talk about, because one of the things that helps people to stop smoking is to show that they're going to benefit from it. You take that away from them, they won't stop. Why should I? It's a pleasure. And I used to say that 20 years you're equal. Well, I think I testified to that some years ago and then the Surgeon General's report came and that in men at the end of 20 years it never really gets down to zero. It's still 2 or

2.2 relative risk, but in women it does, and I think there are a number of studies to show that in women after 20 years of cessation the risk of developing lung cancer is the same to never-ever smokers. That's a very important thing that I rely upon in helping people to stop smoking.

The third thing is that I didn't see, either in her autopsy report, her X rays, or her previous function studies or CAT scans, the kind of changes one sees in chronic smokers; specifically, emphysema, airway obstruction. And having had the opportunity of studying -- or, actually, it was a colleague -- with Henry Green and Oscar Auerbach from the famous smoking dogs, we know there are certain changes that you see with smoking. We have seen adenocarcinoma in this country in women for years, and I believe that that's what she had.

Q. Do you have any opinion as to what was the causation for her adenocarcinoma?

A. I don't know for sure. I think if I did I would win the Nobel prize. Most people forget that -- I don't know what the percentage is, but probably more people die -- More women die of adenocarcinoma of the lung than all the people --

women who die of leukemia and things like that, which we attribute as so common. There are still substantial numbers of patients, women, and there's very little studies. However, there are some speculative or literature data. One, preexisting lung disease. I've always believed that fibrosis, scarring, is a major predisposition to the development of adenocarcinoma, and we know that in certain illnesses. Even in nonsmokers. Scleroderma, rheumatoid arthritis. Idiopathic pulmonary fibrosis. The unit I worked in in London in 1972 published that, and published it again just recently, that people with scarred lungs are more -- have an enormous predisposition to lung cancer. We know that now in asbestosis and other

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forms of scarring disorders.
By the way, am I going on -- I answered your question. Didn't I?
Q. That's fine. I don't want to interrupt you.
A. So that preexisting lung disease, Oscar Auerbach did his work on scar carcinoma. We know that there are people either through infarcs, tuberculosis, are more predisposed to developing carcinoma even in the absence of smoking. That was

done in East Orange, New Jersey, in the sixties and seventies, by Oscar.
Now, are there other things? I'm not an expert on radon. I really don't know the nutritional literature, but I am an expert on asthma and believe that if you understand what asthma is -- Asthma is a chronic inflammation. That's what it is. It's not spasm. It's inflammation, inflammation associated with cells that elaborate certain stuff. I believe, 1, there's a documented evidence that there's an increase in lung cancer in asthma. Not a lot. Thank God, because asthma is such a prevalent illness and I think in the years that I've been practicing, fortunately I've only seen two patients who develop lung cancer and asthma. As a matter of fact, I think I've gone on record for saying asthma seems to be a protection against the incidence of lung cancer because the majority -- the vast majority of asthmatics don't smoke. They can't smoke, because if they were to smoke they would have more clinical symptoms.
That was another thing about Mrs. Mehlman. Pack a day, 20 cigarettes a day in an asthmatic? I know what happens when I have a

cigarette. In any event -- So I think that preexisting lung disease -- and that includes asthma. -- it predisposes to lung cancer.
I've always been fascinated by depression, and I think there are studies to show there are certain individuals with depressed personalities that are more susceptible to tragic catastrophic illness, cancer being one of them. And some years ago there were studies to show that depressed people have reduced natural killer cells, but I'm not an expert in that. I think there is some evidence -- Again, I am not an expert on environmental tobacco smoke. I don't believe personally it's a confounder, but there are some people who are great advocates. Certainly the Japanese. I remember at a conference where I had, the guy who invented the fiber scope was at a dinner with myself and my wife, and he -- His comment was, Well, in America you have big houses and your men are not as close to your women, but in Japan we live in very small houses and we live very close, and that's what his idea was because they were the first to identify the relationship of lung cancer and side-stream smoke. Other than that, I don't know.

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Q. You said a lot. Let me try to go back a little bit.
You said you testified earlier to the fact that -- I hope I'm getting this right, but I think you said that cessation would not -- cessation would eventually realize a complete benefit from quitting, or something to that effect. Do you remember that?
A. I said people who stop smoking derive significant benefit and that at the end of 20 years most people who have stopped smoking actually convert to never-ever smokers.
Q. What I was interested --
A. I did correct that by saying -- I said that and I testified to that in court in a case some eight years ago or seven years ago.
Q. That's what I was interested in.
MS. PATTERSON: I think he was just in the middle of an answer.
A. It was some years ago I testified on another -- an asbestos-related case that men who stop smoking for over 20 years should be considered never-ever smokers, and I think I was wrong because two months or three months later came the Surgeon General's report that showed after 20 years there

is still some risk -- relative risk in men, but not women.
Q. And you're referring to the 1990 Surgeon General's report. Is that correct?
A. No. I think it was the later report.
Q. Even after 1990?
A. Yes. The 1990 report I believe I interpreted it as that it was equity.
Q. And then you said that in women 20 years of cessation -- There's studies or evidence to show that in women after 20 years of smoking cessation it's almost the same as a never smoker or the same?
A. If they stop before the age of 40.
Q. Do you remember specifically what study you're referring to there?
A. Peto and Doll, Halpren, Tong, the one that -- I think I quoted it in my paper.
Q. If you could turn to Safirstein-2, because I think that's where the articles are listed.
A. That's not all the articles. That's just the recent ones.
MS. PATTERSON: Just the best of your recollection today, Doctor. Don't worry about

it if there's something else you need to refer to.
Q. For ease you could just call out the numbers on that letter.
A. I think it's 14, 9, 3. Luben. It's not in here.
MS. PATTERSON: For clarity, could we just have this copy marked now.
MR. KLOK: If you want to go ahead and asterisk. You can asterisk Number 3, Number 9.
Q. In reviewing Connie Mehlman's case did you make a relative risk calculation for her

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using any of that information you cited?
A. I'm not an epidemiologist or a statistician. No, I didn't.
Q. Do you use relative risk calculations at all in your medical practice?
A. No. When I published my paper on lung cancer I quoted relative risk, but I do not use it in the everyday practice of medicine.
Q. And is it your opinion as -- in this case that Connie Mehlman's risk of contracting adenocarcinoma 20 years after -- 20 years plus, I think is what it says, after cessation is almost the same as a never smoker?
A. I think it is the same.

78

Q. So it is the same, in your opinion, as you sit here today.
A. Yes.
Q. Did you recently review the literature, or is that something you do in the course of your practice? At least the literature you cited to me.
A. I reviewed -- I regularly review the literature on sarcoid lung cancer, asthma, and asbestos about every three to six months. I just reviewed the literature on asthma because of the company that we have formed which focuses on asthma and emphysema. And I did review additional documents to see if there was any changes on risk and lung cancer for this particular case over the last month or two.
Q. And you mentioned --
A. Specifically I could tell you the Peto article, which I think just came out in the last year.
Q. You mentioned that you -- in your opinion preexisting lung disease could be a factor in adenocarcinoma. Is that correct?
A. That's correct.
Q. And other than asthma did you find

79

any evidence of any other preexisting pulmonary disease in Connie Mehlman's case?
A. No. I did not find any evidence of fibrosis specifically, although I must say she died of adult respiratory distress syndrome and I wasn't -- I didn't have the time to go -- I'm not a pathologist. But no. The gross illnesses I did not find other than asthma.
Q. You also stated that you're not an expert in depression. Correct?
A. That's correct.
Q. And you don't plan to make any testimony in the Mehlman case associating depression to adenocarcinoma?
MS. PATTERSON: I think he's already indicated what he may testify to.
MR. KLOK: I think I want Dr. Safirstein's answer.
A. I do believe that I am -- You asked me a question before. Do I think there are other things that can predispose to lung cancer, and I said it's well reported in the literature that depression

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can.
Q. Have you had occasion to read in the literature the relationship of depression with

80

smoking?
A. Not specifically.
Q. Do you know of any relationship of depression and smoking?
A. I've read -- I have -- In my clinical practice I know there are definite tendencies for depressed people to smoke. I've not done a formal study, and I'm not a behavioral psychologist so I can't tell you, but I can say that there are times when if you treat depression, patients then have the ability to stop smoking. That's my clinical experience.
Q. Do you know whether or not Connie Mehlman suffered from depression?
A. I think in the review of the records depression was diagnosed by some physician in the past.
THE VIDEOGRAPHER: We're off the record.
(Recess.)
THE VIDEOGRAPHER: We're back.
Q. Dr. Safirstein, based on your review of all the evidence in this case thus far is it still your opinion that due to the cessation period of Constance Mehlman that cigarette smoking

81

was most likely not a substantial contributing factor?
MS. PATTERSON: I think he's asked and answered that.
A. Yes.
Q. How many patients -- And this I realize may be an estimate. How many patients in your estimation have you reviewed with lung cancer or treated with lung cancer?
A. I can give you a reasonably close. I used to see somewhere, from 1970/'72 to 1995, approximately 80 to a hundred patients with lung cancer -- newly diagnosed cases per year. I published two articles on our five-year experience, and the numbers are about the same, so if you figure an average practice year is from '73 to '96 or '95, which is 20 years, an average -- I've probably seen in excess of 2,000 patients with lung cancer.
Q. Of those can you make a reasonable estimate of how many of those were smokers?
A. 90 percent. I think the actual number in one of my papers was 87 or 88 percent.
Q. Do you know what percentage of those with lung cancer were former smokers? Again,

82

a reasonable estimate.
A. I know it is in my papers. I can't tell you. I do know about ten percent, give or take a percentage point, were never-ever smokers and that the bulk of those were women. It was something like 70/30, but of the 90 percent that had been smokers I, frankly, don't know how many were former

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smokers as opposed to current smokers. As a matter of fact, that was one of the criticisms in one of my papers. We had the information, but I just didn't feel like going back and pulling it out.

Q. Is it possible that some of the patients you treated may have had a cessation period of over 20 years, and you're not aware of it, who developed carcinoma?

A. I guess it's possible, but generally it's something we look for very carefully.

Q. Of the nonsmoker group, which is approximately ten percent -- Is that correct?

A. Yes. Ten percent of the total.

Q. Out of that ten percent of the total that developed cancer -- lung cancer, who did not smoke, what percentage, if you know, had occupational exposures to carcinogens?

A. I can't give you the exact number, but it

was very small. Having practiced in Newark, there were patients who had been involved in certain industries locally, chromium plating and that sort of stuff, but it wasn't a large number, and in the women I can't remember a single female patient nonsmoker with lung cancer who had an occupational history that I could recall was contributory to the lung cancer.

Q. In your statement where you say in 30 years of clinical experience you've never seen a female patient develop lung cancer after 20-plus years' history of smoking cessation, would you consider that a scientifically valid observation?

A. No. It's a clinical observation.

Q. So, having said that, it doesn't mean that people do not develop adenocarcinoma after 20 years' cessation. Is that correct?

MS. PATTERSON: Object to the form.

A. I think it's unlikely.

Q. But possible. Is that correct?

A. I think anything is possible.

Q. Is there a particular year of cessation that you view as significant when a patient develops adenocarcinoma after quitting

smoking? Is there any particular time period you think is significant?

MS. PATTERSON: Object to the form.

A. I'm not sure I understand.

Q. Well, 20-years-plus of smoking cessation you don't think is significant in the development of adenocarcinoma. Would 19 years of smoking cessation be significant for the development of adenocarcinoma?

MS. PATTERSON: Object to the form. I think it's very unclear what you mean by "significant," and your question sounds as if the cessation is significant to the development of the adenocarcinoma.

Q. Is there any -- Let me rephrase that.

Is there any time period that you

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would think smoking is a substantial contributing factor to adenocarcinoma?
A. I'm not an epidemiologist, and I can only go by cohorts, which is what is published. Zero to ten, ten to 20, 20 to 30. I think it's not simply the period of time, the duration. It actually comports to at what age did they stop. Now, most

85

people stop -- They start in teenage years, and they stop at 20 years. It will be around 40, but if a person starts at 20 and stops -- 30 and smokes until 50 and then he's 70, I don't think it's the same. However, I think that if a person stops cigarette smoking and then develops lung cancer in five years or ten years, the data suggests that the relative risk remains at that level. I also believe that in most of the data that we deal with they are mostly -- the smokers tend to be characterized as heavy smokers, greater than 20 pack years, and I think that in this case we're dealing with someone who smoked less than 20 pack years. But I would say that if someone developed a lung cancer at 15 years, I think that you would have to have an attributable risk to smoking, and whether 15 or 20, would then take into consideration when they stopped, how much she smoked, but at 15 years I still think there would be some.
These are statistical pieces of information, and I'm not sure, especially as you get below the age of 40, that we have enough numbers that can be significant -- that you can have a confidence level. We're dealing in small

86

numbers under the age of 40 in most of the studies that I read.
Q. Does your assumption and your opinion, when reviewing Connie Mehlman's number of pack years, start from the premise of ten to 13 years of exposure, pack years of exposure?
A. No.
MS. PATTERSON: What assumption?
A. The assumption is 20-plus years, but I think she was substantially less than that. I'm using the -- her clinician's assumption.
(Whereupon, Exhibit Zafirstein-4 is marked for identification by the reporter.)
Q. Doctor, I'll ask you to briefly review this study and see if it's something you can identify.
A. Yes. I've read this paper.
Q. If you could read the caption, for the record, on this paper?
A. "Patterns of Absolute Risk of Lung Cancer Mortality in Former Smokers by Michael Halpren, Brenda Gillespie, Kenneth Warner."
Q. If we could turn to Table 4, based on your review of the information in this case on Connie Mehlman's medical history, what age did you

87

assume that she quit smoking?
A. She was born in '34. She stopped in '74. She was about 39.

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Q. So she would have been 39 or 40. Is that correct?
A. Well, she could have been -- I put her in the 30 to 39. I think she was 39.
Q. So looking at this chart, what would the relative risk in Connie Mehlman's case be or expected to be, given her cessation, of when she contracted adenocarcinoma?
A. The actual number of relative risks compared to never-ever smokers?
Q. Yes.
MS. PATTERSON: You're asking him -- You're not asking for his opinion.
MR. KLOK: Just what's reflected in the chart.
A. Well, there were 13 cases out of 67,000, and in individuals Age 30 to 39, who developed cancer from the ages of 59 to 63. There were 13 reported cases.
Q. And from the age group of 40 to 49 is that a bigger sample of individuals?
A. There were more individuals at this age

group, which assumes that they smoked for a longer period of time. There were 74 in a hundred thousand.
Q. Do you think it would be unreasonable to assume that Connie Mehlman quit at the age of 40 as opposed to 39?
MS. PATTERSON: Object to the form.
A. Well, I just testified that everything that I read was that she stopped at -- in 1974.
Q. Correct?
A. And she would have been 39-plus, and in my testimony as well is that these are patients who smoke 20 -- well, I won't say anything more. I think the data is that she was 39.
MS. PATTERSON: Off the record for a second.
THE VIDEOGRAPHER: Off the record.
(Recess.)
THE VIDEOGRAPHER: We're back.
Q. Dr. Safirstein, could you explain your underlying assumptions and analysis when you state in your opinion that you expected to testify that due to the duration of Constance Mehlman's smoking cessation cigarette smoking was most likely

not a substantial factor in the development of her lung cancer?
A. From the medical literature. It has been my opinion that individuals who smoke -- who stop smoking for greater than two decades, generally in women the relative risk is essentially the same as never smokers. The nature of her cancer, an adenocarcinoma, is not unheard of and is fairly well known to occur in women in never smokers, and its incidence is substantial in America. The absence of -- actually, you only asked me on the issues of smoking.
Q. Correct.
A. Nothing else. Okay. So the basis of my

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opinion is that -- data that I have read is that after two decades of discontinuation of smoking patients' relative risk, women, are essentially the same as never smokers.

Q. Are you familiar with any medical literature that states the increase in adenocarcinoma is related to the changing technology of cigarettes, like filters, low-tar, low-nicotine cigarettes?

A. No. I'm not.

Q. Are you familiar with medical

literature that states the increase in adenocarcinoma may be in part as a result of the increase of tobacco specific nitrosamines?

A. When you say "familiar," have I ever seen articles to that effect?

Q. Correct.

A. I've seen abstracts presented, and I think -- but I'm not -- I'm not an expert on composition of cigarette smoke. I'm not an oncologist or a molecular biologist. I've seen references to it, but that's all. I don't think I've ever read the articles in total, so I can't really attest to their credibility.

Q. Is adenocarcinoma the fastest growing -- fastest-growing form of cancer?

A. I think I know what you mean.

Q. I think I phrased that awkwardly. Is adenocarcinoma -- Is the prevalence of adenocarcinoma in the population the fastest growing right now?

MS. PATTERSON: I would object to the form of that. Prevalence, fastest growing. I don't think that's a fit.

A. Adeno --

MS. PATTERSON: Let me interrupt.

Could you just -- I think we'll have a clearer record.

Q. Dr. Safirstein, do you understand what I'm asking?

A. If you are asking me that do I believe that the incidence of adenocarcinoma of the lung is growing more rapidly than other forms of lung cancer over the last 20 years, I think that has been well documented. The actual reason for that has been greatly debated.

Q. And is smoking -- Has smoking been scientifically established as being related, causally related, to adenocarcinoma?

MS. PATTERSON: Any particular patient, or in general?

Q. I'm talking about the medical literature.

A. There are numerous articles that relate the fact that smoking is related to all kinds of histologic forms of lung cancer except bronchoalveolar carcinoma.

Q. In your opinion is adenocarcinoma causally related to cigarette smoking?

MS. PATTERSON: Object to the form. If you're asking him specifically as to a

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patient, that's one thing. If you're asking him in epidemiologically, that's another.

MR. KLOK: I think the question is clear.

Q. Doctor, if you can answer the question?

A. I believe that there is a relationship between cigarette smoking and adenocarcinoma in specific patients that I've seen.

Q. Did you read Michael Thun's article, Cigarette Smoking and Changes in the Histopathology of Lung Cancer?

A. I believe I glanced -- I did read it. I wouldn't say that I have digested all of it, but I saw its conclusions.

MS. PATTERSON: It's T-H-U-N. Right.

A. It's not an article that I'm very familiar with.

Q. If you could, Dr. Safirstein, turn to your Exhibit 2, Safirstein-2. Is that Number 13?

A. Correct.

Q. So it's one of the articles that you reviewed in preparation for this case. Is that

correct?

A. I did.

Q. Did you agree with his statement that the increase in lung adenocarcinoma since the 1950s is more consistent with changes in smoking behavior and cigarette design than with diagnostic advances?

MS. PATTERSON: I would object to asking the doctor whether he agrees with the statement in an article without showing him the article and in its context. I don't think that's fair. If you have it, let's take the time to have him review it.

Q. You can answer the question if you understand it.

A. Number 1, I'm not an expert on cigarette design, and I haven't got the faintest idea of what they're talking about. It's not something that I do clinically, and I don't agree with it or disagree. I really have no opinion.

Q. So if you could be shown that cigarette design changes over the years may have an effect on the manifestation of adenocarcinoma in the population at large, do you think that may change your opinion in this case?

MS. PATTERSON: I would object based on his prior answer. That's a mischaracterization of what he just said.

A. No. I base my opinion, as I've said before, that is in the -- In my experience and in reading the literature in Mrs. Mehlman's issue I based my opinion on the duration of cessation, not on issues related to design. I am not an expert on nitrosamines or molecular biology or cigarette design.

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Q. Do you have an opinion as to whether Connie Mehlman's asthma played any role or had an effect on her developing adenocarcinoma?
A. I think it might have.
Q. I'm sorry?
A. I think it might have. And the reason for that is is that there's evidence in the literature that there's a higher incidence of lung cancer in patients with asthma, and if you understand asthma as a chronic inflammatory process and the development of airwave remodeling that goes in poorly-treated asthmatics and there is evidence of obstruction, one can postulate that cellular turnover is increased and the chances for mutagenic change is enlarged. That's theoretical. The facts

are that the -- In the studies that have been reviewed it appears that preexisting lung disease, including asthma, there is an increased relative risk in developing cancer even among nonsmokers.
Q. Do you know whether amongst -- Do you think asthmatics are more susceptible to developing lung cancer when exposed to carcinogens?
A. I can't quote any particular articles, so I don't know the answer to that question.
Q. Do you know whether you've reviewed in the medical literature whether or not there's been an association of carcinogens and asthma that may be multiplicative or synergistic?
A. In the articles I've read, most of them are epidemiologic articles, and I don't believe that there has been any specific reference or allusion to what occupations or businesses or exposures these people had. It simply is a relative risk paper stating that asthmatics die earlier, and the reason they die is because of other issues related to cancer, obstructive lung disease, whatever. To my knowledge there is no relationship published about what they did and their exposures.
Q. Is it your opinion as a medical expert that asthma, within a reasonable degree of

medical certainty, causes lung cancer?
MS. PATTERSON: Just in general.
Q. In general?
A. In general? I think it must be a fairly rare event. In my experience -- In looking over my records I've had two patients, both women, who developed lung cancer, to my recollection, who had asthma.
Q. And in those two cases, observations, in your experience would that more likely be an anecdotal observation?
A. Yes.
Q. Would that still qualify as an expert opinion within a reasonable degree of medical certainty?
MS. PATTERSON: Would what specifically still qualify?
Q. Your conclusion that asthma can cause adenocarcinoma.
A. It is only an observation. I don't know what "reasonable" is. You will have to define that

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for me.
Q. Is it more likely than not?
A. I think it's more likely that asthmatics don't develop lung cancer. Otherwise, we would be

97

inundated with epidemics. On the other -- So that it would have to be an anecdotal conclusion in someone's clinical body of experience, but I could fairly say that the majority -- the vast majority of asthmatics don't develop lung cancer. I have been quoted as saying that, and one of the reasons that I have been criticized for it is because asthmatics don't smoke.
Q. So would it be more accurate to say -- to characterize -- And you correct me if I'm wrong. -- that asthma causes adenocarcinoma is more of a hypothetical theory than scientific fact? Is that correct?
MS. PATTERSON: Object to the form.
A. Oh, absolutely not. The two or three cases that I've seen are real, and I don't know how to explain it other than to say that I've had asthmatics who never smoked who developed cancer, and it's up to the epidemiologist and the other scientists and statisticians to figure is this a causal relationship or unrelated. I don't know. Maybe video recorders are associated with cancer. I'm not sure. The relation of causality is never very easy to make.

98

All I am telling you is that Mrs. Mehlman had asthma. I believe she had lung cancer. She had a long period of cessation which should not have been related to her cancer, so in trying to find other reasons I offer as a possibility asthma because it's been stated in the literature and I have experienced it clinically. Is it valid? Is it absolute? No. Cause and effect is extremely difficult under the best of circumstances.
Q. I remember you earlier mentioning that you don't consider yourself an expert in the nutritional aspects associated to adenocarcinoma or lung cancer. Is that correct?
A. I can blanketly tell you that I'm not an expert on nutrition.
Q. So in this case you will not, will you, offer any opinion relating Connie Mehlman's adenocarcinoma to a high-fat diet?
A. No.
Q. Or high cholesterol?
A. No.
Q. What is your opinion about, if any, on that subject?
A. None.
Q. Do you have any disagreement with

99

those conclusions relating nutritional aspects to adenocarcinoma or lung cancer?
MS. PATTERSON: I think you should be a little more specific.
Q. Let's go to high-fat diets and adenocarcinoma.

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MS. PATTERSON: What conclusions?
Q. Do you agree that there's a relationship between adenocarcinoma and high-fat diets?
A. I don't know.
Q. You briefly had mentioned when talking about other risk factors or potential risk factors -- I think we changed from stress to depression. And if you could review your Safirstein-2 and see if there are any articles there that you can identify linking depression to lung cancer or adenocarcinoma?
MS. PATTERSON: Limiting it to those articles on that exhibit?
MR. KLOK: At this point, yes.
A. I don't think so.
Q. What information or sources are you using to link depression with adeno -- well, lung cancer, I suppose, first, and adenocarcinoma?

100

A. I think there are a couple of studies that I have in my file on the relationship of depression -- personality testing and depression, and over the years articles that have appeared relating depression to reduction in immunologic surveillance -- I can't give you the names of those articles. I could probably find them in my files. -- hypothesizing that in depression there may be changes in immunologic capability of recognizing tumor cells through the reduction of natural NK cells and other phenomenon. I think this has been well described in the literature in rheumatoid arthritis. I think lupus.
Q. And in Connie Mehlman's case do you have an opinion as to whether or not depression was a factor in her developing adenocarcinoma?
A. I think it might have been. When we're looking for causality -- Let's step back for a minute. When we're looking -- For instance, of the 10,000 cases of lung cancer in America that occur in nonsmokers -- or 15,000, more than half are women. We focussed on the causes in the ones with smoking and assume that they're due to smoking, but there's a huge body of patients who develop lung cancer that we really need to address causality

101

and, therefore, we're at the infancy of looking for those factors. So people talk about high fat. I'm not a nutritional expert. People talk about depression, and individuals talk about various preexisting lung disease, environmental changes, radon, side-stream smoke, environmental smoke, change in air conditioning, and I think what we're -- We really don't have the science yet. So much of what we're talking about is speculative, including whether Connie Mehlman's depression actually caused adenocarcinoma. I don't believe that I can actually give you a yes or a no.
We're looking for reasons why eight, ten, 15,000 people a year die of lung cancer who don't smoke. People forget about that. Of the 170,000 patients a year who die of lung cancer, 90 percent are smokers, but ten percent are not.

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That's 17 percent. And of those, more than 70 percent -- or between 50 and 70 are women. Why? I don't know, and I don't think we've done enough research on that.

Q. In Connie Mehlman's case, she was a smoker. Correct?

A. Yes.

MS. PATTERSON: She was a smoker

102

at some point in her life.

MR. KLOK: The question stands as it is.

MS. PATTERSON: I would belatedly then object. If you're asking him was she a current smoker, than please --

MR. KLOK: That's not the question.

Q. She was a smoker. Is that correct?

A. She had smoked in the past.

Q. And she had -- Do you acknowledge whether carcinogens are present in cigarettes?

MS. PATTERSON: Object to the form. Acknowledge whether.

A. I acknowledge that there's a body of literature that has clearly demonstrated multiple carcinogens in various aftereffects of smoking.

Q. And is there any evidence on the record of any exposure to the level of carcinogens that she was exposed to in cigarette smoking?

MS. PATTERSON: Object to the form.

MR. KLOK: Let me rephrase that.

Q. Is there any -- Is there any

103

evidence on the record you reviewed on Connie Mehlman that showed any other exposure to carcinogens similar to that that she was exposed to during her smoking period?

MS. PATTERSON: Object to the form.

A. I don't know how much -- I mean, we're sitting here and asking can I compare another carcinogen? I don't know how much she got from the cigarette smoke, number 1. And I don't know what the environment had. The answer is no.

Q. Do you know whether or not -- As at least from your review of the record was she exposed to asbestos in any significant amount?

A. Not to my review of the literature.

MR. KLOK: Why don't we go off the record, take five minutes here, and see whether or not --

THE VIDEOGRAPHER: We're off.

(Recess.)

THE VIDEOGRAPHER: We're back.

Q. If you could turn to Safirstein-1 and then going back to Page 3, there's a sentence here that says -- I think it's right above the Caption 4, that last paragraph towards the end,

104

"Dr. Safirstein reserves the right to respond to various contentions made by plaintiff's medical

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expert witnesses or other witnesses providing relevant testimony." Do you see that there? Have you reviewed the plaintiff expert disclosures in this case of Dr. Feingold?
A. Yes, I have.
Q. And do you have any responses to any of the contentions made by Dr. Feingold in his disclosure?
MS. PATTERSON: I think if you're going to ask him to comment on the expert disclosures, please show it to him. That's not fair.
MR. KLOK: I'm going to find out if he has any comments first.
MS. PATTERSON: You're asking him to respond to a particular document, and you're not putting it in front of him. I don't think that's fair. I think if you want to ask him to respond --
Q. Doctor, I'm just asking a very elemental question.
A. I have a number of areas where I disagree with Dr. Feingold, and I wish I had my copy because I actually underlined some of them.

(Whereupon, Exhibit Safirstein-5 is marked for identification by the reporter.)
Q. Dr. Safirstein, if you could take a moment to review this.
MS. PATTERSON: Actually, please review it thoroughly. More than a moment.
Mr. Klok, this is a 39-page small-typed document. I think if you're going to be asking him what he agrees or disagrees with I'm going to have to ask that we take a long break and have him thoroughly read it.
MR. KLOK: That's fine if you want to take a lunch break at this point.
MR. CLARK: Unless your plan is to ask specific questions about specific --
MS. PATTERSON: If there's something you want to specifically call attention to, that's one thing. But -- He's obviously trying to accommodate the time and is flipping through, very quickly, a document that I think, frankly, if you're asking him to agree or disagree with, he's got to specifically read.
MR. KLOK: I am just trying to figure out what his contentions are.
MS. PATTERSON: I'm sorry?

MR. KLOK: I'm trying to figure out what his contention are.
MS. PATTERSON: If you're asking him to go through it specifically and give you all his contentions with respect to it then we're going to have to take an hour. It's a 39-page, single-spaced document with attachments and charts, et cetera, and I -- If that's going to be your question I think you need to take some period of time for him to go through it and study it.
MR. KLOK: We'll see how we progress. At this point we'll see how we progress. Depending on what his answers are we can take a

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break.
MS. PATTERSON: Mr. Klok, are you going to be asking Dr. Safirstein to comment on any responses or disagreements he has with this agreement? Is that the question posed to him? Because right now he's flipping, and that's not an appropriate amount of time to give him.
MR. KLOK: I think he's already reviewed this document before, as he's already testified. So I don't see a reason to stop for a break for him to review it until he tells me he needs to.

107

MS. PATTERSON: I would not permit him to respond to you, in a two-minute review, to a -- if your question is going to be general with respect to his disagreements.
MR. KLOK: That is your prerogative, but the question is not on the table yet, so I don't know if you can instruct him one way or another.
MS. PATTERSON: I'm asking you out of courtesy to tell me what the question is going to be and then we can figure out an appropriate procedure.
MR. KLOK: At this point we're just identifying the document.
MS. PATTERSON: All the question is right now before him is what's the document?
MR. KLOK: No. That's not the question. The question has been for him to identify the contentions that he takes issue with with Dr. Feingold's opinions. I think we're going to go through --
MS. PATTERSON: Okay. Then I would ask that we go off the record because this is a detailed document and I would like to give him an opportunity alone without distractions to go

108

through it and take whatever notes he feels is appropriate so he can respond to it.
MR. KLOK: Why don't we find out if he's already reviewed the document and see if he's familiar with it before you do that.
MS. PATTERSON: He's reviewed the document. He indicated that already to you, but you're asking for a lot, so I can -- I'm instructing the --
MR. KLOK: I think you're coaching the witness again, but I want to find out what Dr. Safirstein is going to say when I ask him questions. Depending on that I'll give him all the time necessary.
MS. PATTERSON: If your question is the general question, he has to spend the time to review it.
MR. KLOK: We will find out, won't we.
MS. PATTERSON: Why don't you put a question on the table, Mr. Klok.
MR. KLOK: Why don't we wait until he finishes reviewing the document.
MS. PATTERSON: He's not -- He

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cannot possibly --

109

MR. KLOK: He's reviewing as we're speaking, counselor. I don't know what you're trying to make hay about.

MS. PATTERSON: He cannot possibly have the time to review this document right now. He's trying to accommodate you.

MR. KLOK: In your estimation that's correct.

MS. PATTERSON: So why don't you ask a question.

MR. KLOK: Why don't we wait until he finishes reviewing the document.

A. There are so many areas here that I -- I really am going to need a lot of time to review. I don't have my notes specifically, and my copy I left at home because no one told me to bring it.

I have a number of areas where I disagree with Dr. Feingold, and if you want we can go through it one by one, but I really would like to review at least the last ten pages. Actually, Pages -- It's eight pages.

Q. Dr. Safirstein, you said that your copy has notes on it. Is that correct?

A. At home. Yes.

MR. KLOK: I would ask counsel to

110

provide the copies of all the expert disclosures that you've written notes on.

Q. Is that agreeable with you?

A. I'll bring in all my files.

Q. Dr. Safirstein, if I could turn your attention to Page Number 2.

A. Of this document?

Q. Appendix B4, Page 2, "Smoking history from the medical records." Do you see that?

A. Yes.

Q. You had stated earlier that you think the pack year history for Connie Mehlman was in the realm of ten to 13 years. Is that correct?

A. Yes.

Q. Is there -- There are references on Page 2 to various medical records. Correct?

A. Right.

Q. And was there -- Do you recall what Dr. Feingold's conclusion was as to how many years of exposure Connie Mehlman had?

A. Twenty.

Q. If you could turn to Page 38, Conclusion, would you tell me where you disagree with Dr. Feingold's contentions in his conclusion?

111

MS. PATTERSON: Wait a second. 38.

A. I think if I could go through one by one.

Q. Sure.

A. I don't agree at all that the patient smoked cigarettes at about the age of 16 and smoked one package of cigarettes a day until the midseventies. That flies in the face of numerous pieces of information.

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In addition, I don't know if the conclusion that 90 percent of patients who start smoking in youth and who smoke a pack a day are addicted to nicotine. I don't know if that's true or not. I'm not a behavioral psychologist.

Q. You had stated earlier that you don't consider yourself an expert in nicotine or addiction. Is that correct?

A. That's correct.

Q. What else --

A. Now, what I do believe is that the majority of my patients have been able to stop smoking, so that if they are addicted they seem to be pretty successful in overcoming their addiction and, obviously, there are many ways. Having run antismoking clinics, they are, in most instances,

fairly successful.

I agree with the fact that she died at the age of -- I disagree with the fact that she had 20-plus years of smoking one package of cigarettes a day. I don't think there's any justification for that conclusion. And she actually stopped before the age of 40.

Q. Do you know offhand why you think there's no evidence of the 20-pack-year history? Can you specifically recollect any records that say otherwise?

A. Yes.

MS. PATTERSON: Asked and answered.

A. And the answer is yes, and in many of the depositions there's evidence that she had stopped for periods of time when she was in Maryland, when she was pregnant, and when she went to Smoke Enders, when she went to the Seventh-Day Adventist. There are allusions that it was a half a pack a day, not a pack a day. I think there are lots of it. I think my conclusion is that she did not smoke one pack a day for 20 years. It was something less.

I agree that she died of a

poorly-differentiated bronchogenic carcinoma. And I disagree with this conclusion that her risk was 566 percent times greater than the risk experienced by a never smoker. I don't know where he got that information from.

MS. PATTERSON: Referring to Paragraph 3.

A. Paragraph 3.

Q. I take it you disagree with that last sentence on the opinion -- on his conclusion, "The patient's fatal lung cancer is caused by cigarette smoking"?

A. Of course. Yes.

Q. Did you have an opportunity to review the radiology for Connie Mehlman?

A. Yes, I did.

Q. Were there any -- Was there any specific conclusion that --

MR. KLOK: Let me strike that.

Q. Was there anything you saw in

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Connie Mehlman's X rays that you thought was unusual in your review of them?
A. Yes, I did.
Q. What was that?
A. I found that given -- at least I was

114

told -- that her smoking history and her long history of childhood asthma, I saw very little evidence of that both on her routine chest X rays from 1992, 1997 -- There's a missing film from 1996. -- and her CAT scans. That's Number 1.
(There is a discussion off the record.)
MS. PATTERSON: I ask the reporter to read back the beginning of Dr. Safirstein's answer.
(Whereupon, the previous answer was read back by the reporter.)
Q. And I think you gave that -- You gave that opinion earlier, did you not, Doctor?
A. I did.
Q. We discussed that already.
MS. PATTERSON: You don't want him to complete his answer?
MR. KLOK: No. I think it's already on the record. If it's already asked and answered I have no reason --
MS. PATTERSON: He just said Number 1.
Q. If we could go back to 12-95, did you notice -- If you look on Page 16 of Dr.

115

Feingold's report, when reviewing the radiological evidence of Connie Mehlman's case did you find anything unusual between 12-10-95 and February of 1996?
A. She had an infiltrate in the right lower lobe.
Q. And do you have an opinion as to what kind of treatment -- Do you have an opinion as to whether she was treated properly during that period of time?
A. I wasn't asked to review that.
By the way, the Number 2 in there was that Mrs. Mehlman had a large hiatus hernia which seemed to predate lots of stuff, and there is a relationship between asthma, hiatus hernia in what is clinically known as GERD, gastroesophageal reflux disease, and perhaps, if I may, we now know that individuals who have recurrent reflux have a very high incidence of esophageal cancer, so much so for the treatment with antiacid agents like Prilosec. There is also a body of evidence that suggests that GERD can actually produce increasing asthma through irritation of the bronchial tree and aspiration, and it was quite striking, the size of the hiatus hernia, and it would have been one of

116

the things that I think I would have looked for in managing this patient.
Now, is there a relationship between recurrent aspiration, inflammation, asthma, and cancer? I don't know, but I believe it's

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something we should begin to look for because we've only recently realized that recurrent esophagitis due to reflux is associated with local esophageal cancer. You asked me that when I looked at these X rays. That was the other thing that was very striking to me. This was not a very small hiatus hernia. It was substantial.

Q. Did you see evidence in Connie Mehlman's medical records of her having a history of GERD?

A. Yes. Indeed, she saw Dr. Moisha Rubin and had undergone esophagoscopy specifically for that.

Q. Was there anything else of note when you reviewed Connie Mehlman's radiology?

A. No.

(Whereupon, Exhibit Safirstein-6 is marked for identification by the reporter.)

Q. I'm going to have you review the disclosure of Sam Hammar. Do you have that before you?

A. Yes.

Q. Is that a document you recognize?

A. Yes.

MS. PATTERSON: Will you give him an opportunity to take a look at it, please. Is there a particular part you plan to direct his attention to?

Q. Maybe to save time, Doctor, if you want to look at Appendix B4 specifically.

A. B4?

I have B4.

Q. If you could just -- You reviewed Dr. Hammar's disclosure in preparation for this case. Correct?

A. Yes.

Q. And you had stated earlier that you are not an expert in pathology. Is that correct?

A. Correct.

Q. And you do not anticipate giving any testimony in pathology in this case. Correct?

A. Correct.

Q. So insofar as Dr. Hammar's offering pathological opinions, you have no disagreement with those opinions, do you?

MS. PATTERSON: Well, let's --

A. Which particular opinion, that this was an adenocarcinoma?

Q. Correct.

A. I have no contention with that. I just have a contention with the causality, that it was caused by cigarette smoke, but the rest of his report I have no truck with. As a matter of fact, I think if you read his report about the smoking history, I think it's probably quite correct.

Q. So you agree with Dr. Hammar's assessment of Connie Mehlman's smoking history.

A. Yes.

(Whereupon, Exhibit Safirstein-7 is marked for identification by the reporter.)

Q. I'm going to hand you

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Safirstein-7. It might be easier to go on the back of the document -- Let me first have you identify this.

Is this the document that you reviewed or looks like the document you reviewed of Victor Roggli's disclosure?

A. Yes.

Q. If you could turn towards the back, again it's probably Appendix B4.

MS. PATTERSON: It's just B. It's about in the middle.

A. Would that be Page 03?

MS. PATTERSON: There's a statement of opinions, Rhett. It's right after the Appendix B title page. Earlier in the document than you are. I think you have to go back.

Q. If we could look at the statement of opinions, do you see that?

A. Basis for opinions?

Q. Statement of opinions.

A. That would be B, Statement of Opinions. Correct.

Q. If you could quickly review that.

A. I disagree with 3.

MS. PATTERSON: May I interpose a comment, Mr. Klok. It's impossible for Dr. Safirstein to determine whether he disagrees or agrees with 4 because it's just a reference to testimony previously given, so he --

MR. KLOK: Fair enough.

MS. PATTERSON: And the same really applies to 5.

A. I have no idea what 5, 6 --

Q. Why don't we go to the back of the

document and a letter dated November 10, '97.

A. To Mr. Patrick?

Q. To Mr. Patrick. Just prior to Appendix B4.

A. Dated November 10th, 1997?

Q. Do you see it?

A. Yes, I have it.

Q. Can you quickly review that, please.

A. Okay.

Q. I take it -- I guess we'll start with -- What I know you disagree with is the last -- second-to-last sentence on the second-to-last paragraph, I suppose -- the last sentence in the second-to-last paragraph?

MS. PATTERSON: Let's be clear.

MR. KLOK: This information indicates that Mrs. Mehlman's adenocarcinoma of the right middle or lower lobes is causally related to her prior history of cigarette smoking.

A. I disagree with that.

Q. Is there anything else in this one-page letter that you disagree with?

A. No.

Q. And again --

A. I think the approximation of smoking --

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Again he's at 15 to 20 pack years. I disagree with that. I don't think -- "Pack years" meaning one full pack of cigarettes per day for 15 to 20 years. I don't think there's any evidence of that.

Q. But other than those two disagreements you do not have any reason to disagree with his pathological findings. Is that correct?

A. No. No, I don't.

Q. Do you play baseball, Doctor?

A. Yeah. Not anymore.

Q. Where did you used to play?

A. Well, I played for my high school and college teams, and I played for Wheeling, West Virginia. I was cut.

Q. Was it pro ball?

A. Yeah.

Q. Was it a farm team, triple A?

A. Farm team, double A. Never made triple A.

Q. How long did you play for?

A. A year. Painful part of my life.

MR. KLOK: I think I have no more questions. I thank you for your time, Mr. Safirstein.

MS. PATTERSON: No questions. Thank you.

MS. PATTERSON: Before we go off, I would like to give Dr. Safirstein the opportunity to read and sign his deposition before it's finalized. Thank you.

(Whereupon, the deposition is concluded at one o'clock.)

(The exhibits are retained by the reporter.)

I N D E X

WITNESS/EXAMINATION	Page
BENJAMIN H. SAFIRSTEIN, M.D.	4
EXAMINATION	
BY MR. KLOK	4
SIGNATURE OF DEPONENT	125
CERTIFICATE OF REPORTER	126

REQUESTED INFORMATION INDEX

http://legacy.library.ucsf.edu/tid/koq07a00/pdf Source: http://www.industrydocuments.ucsf.edu/docs/tngl0001

PAGE	LINE
109	25

E X H I B I T S

	Page
EXH. 1 Summary of Oral Report of B. Safirstein.....	3
EXH. 2 Letter dated 11-17-00 from K. Weingold to R. Klok.....	3
EXH. 3 Intake Notes of K. Goldblatt, M.D.	46
EXH. 4 "Patterns of Absolute Risk of Lung Cancer Mortality in Former Smokers".....	86
EXH. 5 Report of I. Allan Feingold, M.D...	105
EXH. 6 Report of Samuel P. Hammar, M.D....	116
EXH. 7 Expert Disclosure of V.L. Roggli, M.D.	118

SIGNATURE OF DEPONENT

I, the undersigned, BENJAMIN H. SAFIRSTEIN, M.D., do hereby certify that I have read the foregoing deposition and find it to be a true and accurate transcription of my testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

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C E R T I F I C A T I O N

I, PATRICIA M. MULLIGAN, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that prior to the commencement of the examination the witness was sworn by me to testify as to the truth, the whole truth, and nothing but the truth.

I do further certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action and that I am not interested in the event nor outcome of this litigation.

Patricia M. Mulligan, CSR
Certificate No. XI00780
Notary Public of the State of New Jersey

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